



Docket No.: PC-0022 CIP

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By: Diane Kizer Printed: Diane Kizer

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

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In re Application of: Tang et al.

Title: GROWTH-RELATED INFLAMMATORY AND IMMUNE RESPONSE
PROTEIN

Serial No.: 09/747,524

Filing Date: December 19, 2000

Examiner: Hill, M.

Group Art Unit: 1648

ATTN: GROUP DIRECTOR GROUP 1600

Commissioner for Patents

P.O. Box 1450

Alexandria, VA 22313-1450

PETITION UNDER 37 C.F.R. §1.181

TO VACATE NOTIFICATION OF NON-COMPLIANCE WITH 37 C.F.R. §1.192(c)

Sir:

This is a Petition under 37 C.F.R. §1.181 to vacate the Notification of Non-Compliance with 37 CFR 1.192(c) issued July 16, 2003 in the above-identified application. The Brief filed June 4, 2003 is in compliance with 37 C.F.R. §1.192(c) and therefore should be considered as filed.

Appellants filed a Brief on Appeal in the subject application on June 4, 2003. In response to that Brief, the Examiner mailed a Notification of Non-Compliance with 37 CFR 1.192(c) on July 16, 2003. According to that Notification, entry of the declaration under 37 CFR 1.132 of Tod Bedilion is hereby denied under 37 CFR 1.195 as good and sufficient reasons were not given as to why this declaration could not have been presented earlier. In addition, the new publications referenced in the Brief and appended thereto are also denied entry under 37 CFR 1.195 and 1.197 as these documents were not timely submitted. Accordingly, the Examiner stated, "The brief will not be entered because a substantial portion relies on arguments from the

declaration and also contains references that are not of record in the pending application. Applicants should remove any reference to evidentiary documents (declaration and publications) that are the reason for non entry of the declaration and the brief".

Appellants submit that, even if the 132 Declaration and references submitted with the Brief were not in compliance with 37 CFR 1.195, this would not serve as a basis for failing to meet the requirements of 37 CFR 1.192(c). That is, 37 CFR 1.192(c) specifies the minimum requirements for a brief: (1) Real party in interest; (2) Related appeals and interferences; (3) Status of claims; (4) Status of amendments; (5) Summary of invention; (6) Issues; (7) Grouping of claims; (8) Argument; and (9) Appendix of claims involved in the appeal. As stated in MPEP §1206: "A brief is in compliance with 37 CFR 1.192(c) as long as it includes items (1) to (9) in the order set forth (with the appendix, item (9), at the end)." (Underline added). The Brief filed June 4, 2003 meets these minimum requirements. Therefore, the Notification of Non-Compliance with 37 CFR 1.192(c) mailed July 16, 2003 was issued in error, and should be vacated.

This petition was originally filed on August 11, 2003, but is being resubmitted because of inadvertant typographical errors concerning dates recited in the original petition. Applicants believe that no fee is due with this communication. However, if the USPTO determines that a fee is due, the Commissioner is hereby authorized to charge Deposit Account No. 09-0108.

Respectfully submitted,

INCYTE CORPORATION

Date:

September 12, 2003

David G. Streeter, Ph.D.

David G. Streeter, Ph.D.

Reg. No. 43,168

Direct Dial Telephone: (650) 845-5741

Customer No.: 27904
3160 Porter Drive
Palo Alto, California 94304
Phone: (650) 855-0555
Fax: (650) 849-8886